IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28/04/2004

Coram

The Honourable Mrs. Justice PRABHA SRIDEVAN

Writ Petition No.16377 of 1997

Shree Sathyanarayana Co.,
rep. by its Partner
K.G. Kannappa. .. Petitioner

-Vs-

1. The Assistant Director,
Enforcement Directorate,
Sastry Bhavan,
Madras-6.

2. The Special Director,
Enforcement Directorate,
New Delhi. .. Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying to issue writ of mandamus as stated within.

For Petitioners : Mr. B. Kumar, Senior Counsel
for Mr. R. Loganathan.

For Respondents : Mr. K. Kumar,
Additional Senior Central
Government Standing Counsel.

:O R D E R

A sum of Rs.1,05,70,000/- in the form of Indian Currency was deposited by the petitioner in various instalments pursuant to the notice issued by the respondents under Section 33(2) of the Foreign Exchange Regulation Act, 1973 (hereinafter referred to as the Act) dated 20.7.1996. The last of such instalment was received by the Department on 2.1.1997. An order dated 7.1.1997 was communi cated to the petitioner extending the time limit for retention of the documents/objects seized from the petitioner and in this order, the petitioner's name and the deposits made to the tune of Rs.1,05,70,000/- is mentioned. A show cause notice under Section 51 of the Act was issued on 16.7.1997. These are the crucial dates for the purpose of this case.

2. On 17.7.1996, a team of officers of the Enforcement

Directorate proceeded to the premises of M/s. Pyramid Enterprises, which resulted in seizure of Indian currency and other allegedly incriminating documents. The residential premises of the Director and Partner of the said Pyramid Enterprises were also searched. From the statements recorded from the aforesaid persons, the respondents found that the petitioner had received deposits in the names of foreign nationals and it is in these circumstances that the notice under Section 33(2) of the Act was issued.

3. According to the learned senior counsel appearing on behalf of the petitioner, the respondents did not have the power to retain the documents contrary to the provisions of Section 41 of the Act and therefore, the petitioner has sought for a mandamus for return of the documents. The Explanation to Section 33 of the Act shows that the word 'document' used in Sections 33, 34 and Sections 36 to 41 includes Indian currency, foreign exchange and books of account.

4. The learned senior counsel would submit that the retention is illegal for several reasons. According to him, Section 41 of the Act empowers the officer of the Enforcement Directorate to retain the seized documents for a period not exceeding six months and the aforesaid period of six months may, for reasons to be recorded in writing, be extended by a further period not exceeding six months. The documents were furnished by the petitioner on 31.12.1996 and the six months' period expired on 31.6.1997. The respondents could have retained the documents only if before this date, proceedings under Section 51 or Section 56 of the Act had commenced. The notice under Section 51 of the Act was received by the petitioner only on 23.7.1997, well after 31.6.1997.

5. It was open to the respondents to extend this period by six more months as per the Proviso. This too has not been done. It was submitted that when the Section uses the word, "for reasons to be recorded in writing" before the period of six months is extended, it would imply that the petitioner is entitled to a pre-decisional hearing or at least a post-decisional hearing. According to the learned senior counsel, the retention of the documents depends on the officer having reason to believe that -
(a) the documents would be evidence of contravention of any provision of the Act, rule, direction or order made under the Act; and
(b) it is necessary to retain the documents.

Therefore, the authority extending the period should record that these conditions are satisfied, which would imply that the petitioner must be given the opportunity to show that retention is not necessary. If opportunity is afforded to the petitioner, he would be able to show how and why the document is not evidence of such contravention or how and why it is not necessary to retain the document. The learned senior counsel also submitted that in this case, the documents are currency and cannot be record of contravention of the Act and cannot be evidence thereof, unlike other documents which may record such contravention.

6. For this purpose, learned senior counsel relied upon the

decisions in Assistant Collector, Customs vs. Malhotra [A.I.R. 1972 S.C. 689], I.J. Rao vs. Bibhuti Bhushan Bagh [A.I.R. 1989 S.C. 1884], C.B. Gautam vs. Union of India [1992 (3) SCALE 138], Nilratan Sircar vs. Lakshmi Narayan Ram Niwas [A.I.R. 1965 S.C. 1], Harbans Lal vs. Collector of Central Excise & Customs [1993 (67) E.L.T. 20 (S.C.)] and Arjunan Chettiar vs. The Enforcement Officer [1977 (II) M.L.J. 5 (S.C.)].

7. Learned senior counsel further submitted that the order dated 7.1 .1997 refers to the documents seized from Pyramid Enterprises and one Arul and that it does not refer to any documents insofar as the petitioner is concerned and further, while recording the reasons for retention, the officer only refers to the documents detailed in Annexure-A, whereas Annexure-A does not refer to the documents furnished or seized from the petitioner. Therefore, even if this order is a valid order of extension, it does not relate to the documents seized from the petitioner. Learned senior counsel further submitted that though some of the decisions relied on relate to the Customs Act and other such Acts, when Acts are in pari materia, the reasoning applied by the Supreme Court or the High Court for arriving at the necessity to give opportunity in relation to the provisions of one Act can be and shall be applied to the provisions of another Act which is similar.

8. Learned Additional Senior Central Government Standing Counsel would submit that the approach of the Court with regard to economic offences must be different and in fact, in several decisions of the Supreme Court as well as this Court, it has been held so. He would draw the difference between the provisions of the Customs Act and the Foreign Exchange Regulation Act in order to show that the provision for confiscation under Section 110 of the Customs Act is quite different from the provisions of Section 41 of FERA when documents are furnished or seized. According to him, the basis of seizure of the document or summoning of the document, as the case may be, was that there are materials to indicate that they would be evidence of contravention of FERA. Whereas, the language employed in Section 110 of the Customs Act is quite different. While Section 110(2) of the Customs Act provides that goods shall be returned to the person if no notice under clause (a) of Section 124 is given, there is no such direction to return the goods nor is there a mention of any notice to be given. The Proviso to Section 110(2) of the Customs Act uses the words, 'sufficient cause', while Section 41 of FERA merely requires the authority to state his reasons in writing. Therefore, according to the learned counsel, those decisions relating to the Customs Act will not apply to the case on hand.

9. Learned counsel would further submit that as far as economic offences are concerned, there is no question of limitation since the Economic Offences (Inapplicability of Limitation) Act, 1974 includes FERA in its Schedule and therefore, there was no time limit for the prosecution. He submitted that only when the business premiss of Pyramid Enterprises was searched and statements were recorded, violation of FERA by the petitioner came to light and that is why the notice under Section 33(2) of the Act was issued. The entire case was treated as a group case. According to the learned counsel, this is the reason why even the order dated 7.1.1997 includes not only the documents seized from Pyramid Enterprises or the Directors of the

said company, but also the deposits received by the petitioner. When the order makes it clear that further investigation is necessary in all the cases and corroboratory evidence must be collected, the fact that the documents in respect of which time is extended are not listed in the Annexure can only be treated as an omission. There was nothing to show that there was a deliberate intention to exclude the said documents or that the officer did not find it necessary to retain them any longer. It was submitted that even after the notice under Section 33(2) of FERA, the petitioner furnished the documents only in instalments over several dates and they were received by the Department over a period commencing from 28.9.1996 and ending with 2.1.1997. He would submit that the notice under Section 51 of the Act had also been issued on 16.7 .1997. The date when the notice was received is not relevant for fixing the date of commencement of the proceedings, but it is only the date on which it was issued. For this purpose, learned counsel relied on the Judgment dated 31.8.1995 passed in Writ Appeal No.791 of 1995 in Assistant Director, Directorate of Enforcement, Trivandrum & Others vs. A.J. Kingsley Fernandes by the First Bench of this Court comprising of K.A. Swami, C.J. (as he then was) and D. Raju, J. (as he then was).

10. Learned counsel submitted that in A.I.R. 1965 S.C.1 cited supra, while holding that the Magistrate had no jurisdiction over the articles seized and could not permit their retention after the expiry of the period, the Supreme Court held that the items mentioned in the seizure memo could be retained by the Director of Enforcement. It is, therefore, submitted that the courts, in all these matters, have been conscious that return of the documents seized would not serve the object of the Act. As regards the decision in 1977 (II) M.L.J. 5 (S.C.) cited supra, the learned counsel submitted that this order was passed in the appeal filed against the order passed in The Enforcement Officer vs. Arjunan Chettiar [1977 (I) M.L.J. 497]. That was also a case where the writ petition sought for a mandamus for the return of documents and the period during which the documents could be retained had lapsed. The Division Bench, in that case, refused to issue a mandamus, since the officers had a right to retain the documents under other provisions of the Act. Though even in 1977 (II) M.L.J. 5 cited supra the Supreme Court expressed its disapproval at the action of the Department in retaining the documents beyond the period of one year, stay was not granted. The decision in Directorate of Enforcement vs. Deepak Mahajan A.I.R. 1994 S.C. 1775 was als o relied on, where the Supreme Court observed that, in Acts which are passed ostensibly for purpose which are vital for the economic development of the country and the augmentation of revenue, the Court can look into and some times even go behind the words and enactment to give effect to the legislative intention.

11. It was submitted on behalf of the Department that there was no illegal retention of the documents seized and that it was always open to this Court to fix a time limit for completion of the adjudication proceedings and before that is concluded, the documents in question, which may be evidence of the contravention of the provisions of the Act, should not be returned to the petitioner.

12. Some of the decisions may be referred to, for arriving at a

decision. In Union of India vs. Shreeram Durga Prasad (P.). Ltd. [A.I.R. 1970 S.C. 1597], where it was observed as follows :-
"It is true that the regulations contained in the Act are enacted in the economic and financial interest of this country. The contravention of those regulations, which we were told are widespread are affecting vital economic interest of this country. Therefore the rigour and sanctity of those regulations should be maintained but at the same time it should not be forgotten that Section 12(1) is a penal section. The true rule of construction of a section like Section 12(1) is, if we may say so with respect, as mentioned by Plowman J. in Re H.P.C. Productions Ltd., (1962) C.H.D.N. 466 at p.473.
.....
In London and North Eastern Rly. Co. v. Berriman 1946 AC 278 at pp. 286, 295 Lord Macmillan observed :
.....
'Where penalties for infringement are imposed it is not legitimate to stretch the language of a rule, however beneficent its intention, beyond the fair and ordinary meaning of its language.'
.....
This Court in Tolaram Relumal v. State of Bombay, 1955 SCR 158 at p.164 = (AIR 1954 SC 496 at pp.498, 499) speaking through Mahajan C.J. Observed :
'It is not competent to the Court to stretch the meaning of an expression used by the Legislature in order to carry out the intention of the Legislature.'"

13. In Deputy Director, Enforcement Directorate, Madras vs. Naina Maricair [A.I.R. 1990 Madras 22], a Division Bench of this Court noted that for violation of the provisions of the Act, two proceedings are contemplated. One under Section 51 which could be followed up by imposition of penalty under Section 50 and confiscation under Section 63 . The second proceeding is a criminal prosecution under Section 56 and the 'documents therefore have to be retained if they are considered useful or relevant for any one of these proceedings.' This is the object of permitting the officers of the Enforcement to retain the documents. The Division Bench observed that since this is a power given to the officers to effectively enforce the Act, a very strict interpretation cannot be applied, but at the same time, the power of retention should not be abused by the officers by refraining from taking action within a reasonable time.

14. In Attorney General for India vs. Amratlal Prajivandas [A.I.R. 1 994 S.C. 2179], the Supreme Court observed, as follows :-
"In conclusion it can be said that "the interests of society are paramount to individual interests and the two must be brought into just and harmonious relation. A mere property career is not the final destiny of mankind, if progress is to be the law of the future as it has been of the past."

15. Section 41 of FERA reads as follows :-
"Custody of documents, etc.- where in pursuance of an order made under sub-section (2) of section 33 or of the provisions of section 34 or section 36

or section 37 or of a requisition summons under section 39 or section 40, any document is furnished or seized and any officer of Enforcement has reason to believe that the said document would be evidence of the contravention of any of any provisions of this Act or of any rule, direction or order made thereunder and that it would be necessary to retain the document in his custody, he may so retain the said document for a period not exceeding [six months] or if, before the expiry of the said period of [six months], any proceedings -
(i) under section 51 have been commenced, until the disposal of those proceedings, including the proceedings, if any, before the Appellate Board and the High Court, or
(ii) under section 56 have been commenced before a court, until document has been filed in the court:
[Provided that the aforesaid period of six months may, for reasons to be recorded in writing, be extended by the Director of Enforcement for a further period not exceeding six months.]
Explanation. - In computing the period [* * *] during which a document (hereafter in this Explanation referred to as the said document) may be retained under this section, in any case where by reason of an injunction or order of any court (whether such injunction or order is in relation to the said document or is in relation to any other document reference to which would be necessary for examining or using the said document). -
(a) the said document could not be examined fully for the purpose of determining whether it would be evidence of the contravention of any of the provisions of this Act or of any rule, direction or order made thereunder, or
(b) the said document could not be used for commencing any proceedings under section 51 or section 56, or
(c) the proceedings under section 51 or section 56 could not be commenced, the time of the continuance of the injunction or order, the day on which it was issued or made and the day on which it was withdrawn, shall be excluded."

Therefore, it follows that the documents seized or furnished can be retained for a period of six months, for the reasons stated in the Section. But, before the lapse of the six months' period if proceedings under Section 51 are commenced, then the documents can be retained until the disposal of the proceedings mentioned in Section 41(1). We are not concerned with Section 41(2) because that relates to proceedings under Section 56. The Proviso entitles the Department to retain the documents for a further period of six months for reasons to be recorded in writing by the Director of Enforcement. After the expiry of this six months' period, the respondents are not entitled to retain the documents. But, if Section 41(1) and the Proviso are read together, what follows is that even within such validly extended period of six months if proceedings under Section 51 are commenced, then the right to retain the documents is preserved until the proceedings conclude as per Section 41(1).

16. In this case, the first period of six months will expire only on 1.7.1997, since the documents were furnished completely only on 2.1.1997. Therefore, whether the order dated 7.1.1997 refers to the documents in

question hardly matters. The Department appears to have been under a misconception that the time expires on 16.1.1997. This is clear from the records. Whereas, a reading of the Section would show that the period of six months starts from the date of seizure or the date when the documents are furnished. Therefore, if an order of extension had been properly passed before the expiry of the period of six months, they would have had another six months' period commencing from 1.7.1997. If so, the notice under Section 51 dated 16.7.1997 would entitle the Officer to retain the documents till the disposal of the proceedings as mentioned in Section 41(1).

17. The omission to mention the documents seized from the petitioner in the order dated 7.1.1997 cannot be treated as an inadvertent omission. In Barium Chemicals Ltd. vs. A.J. Rana [(1972) 1 S.C.C. 240], which was a case relating to the Foreign Exchange Regulation Act of 1947, the Supreme Court considered the scope of Section 19(2) and the exercise of power under the said Section. While construing the words 'considers it necessary', the Supreme Court observed as follows :-
"(i) It is manifest that careful thinking or due application of the mind regarding the necessity to obtain and examine the documents in question is sine qua non for the making of the order. An application of the mind with regard to the necessity to obtain and examine only a few of many documents mentioned in the order, while there has been no such application of mind in respect of the remaining documents, would not be sufficient compliance with the requirements of the statute. It is essential that the information, book or other document should be specified in the order. The word 'such' points to the necessity of specifying the information, book or other document in the order. There has to be some nexus between the documents sought to be obtained and the purpose of the Act. Where such a nexus is missing and the document has no relevance for the purpose of the Act, the condition precedent to the making of an order under Section 19(2) must be held to be non-existent.

In this Section, the word used is instead, "said document". So, the order should disclose that the authority concerned had thought over the matter with relation to the documents in question. This is a sine qua non not only for the original order when the Department considers that the documents are in contravention and that they are necessary, but also when the subsequent order of extension is passed. But, as seen already, the order dated 7.1.1997 was passed exactly five days after the documents were furnished, and is not really an extension order as per the Proviso. Eevn if the order is held to refer to the documents in question, the six months' period expires on 6.7.1997 and still, the notice under Section 51 is beyond time. It hardly improves the case of the Department.

18. Even in the above case, where the Supreme Court quashed the impugned order on the ground that an omnibus order in respect of all documents would show no due application of mind by the authority which was a condition precedent for retention of the documents; the Supreme Court did not order the return of the documents to the appellants. On the other hand, the final paragraph of the judgment of the Supreme Court reads as follows :-

"The records in question, in the custody of the Registrar, will be returned to the appellants after a month unless another order has been made under Section 19(2) of the Act or other provision of law."

In fact, this is the recurrent feature in all the orders which have been referred to in this case, the Courts have weighed the interest of the society and the individual interest harmoniously, as observed in A.I.R. 1994 S.C. 2179 cited supra.

19. In 1977 (I) M.L.J. 497 cited supra, the Division Bench of this Court too refrained from issuing the mandamus for precisely this reason. They observed that when the Directorate had the power to retain the documents or to call for the records under other provisions of the Act, the Court should not direct the return of the documents by the issue of mandamus. It was held that if they were to direct the return of the documents, when in law the authority was entitled to have the documents for adjudication purposes, the direction to return the documents would be issued only for the technical purpose of making the Enforcement Officers obey the provisions of the Act. It was observed in that case as follows :-
"The position, therefore, is that while under section 19-G he has no right to retain the documents after the specified period, when once the enquiry is commenced, he is entitled to summon, receive and retain the documents. In such a situation, even though the adjudication proceedings had started after the period specified in section 19-G, it will not be proper for the Court to direct the return of the documents, for, in law, he would be entitled to have the documents for adjudication purposes. It would be for the purpose of technically obeying the requirements of section 19-G, if a direction were to be made for the return of the documents when the officer could exercise his powers to summon them. If a direction to return the documents is to be issued, it is only for the purpose of making the Enforcement Officers obey the provisions of the Act."

The order of the Supreme Court referred to by the learned senior counsel for the petitioner in 1977 (II) M.L.J. 5 (S.C.) cited supra also does not lay down the law in favour of the petitioner. It is only an expression of disapproval at the action of the Officers of the Enforcement Directorate in retaining the documents. However, it is clear from the said order that no stay was granted, which would have resulted in return of the documents.

20. There is another perspective from which this question can also be looked at. The Customs Act provides that if the notice is not given under Section 124 within six months, the goods shall be returned. Therefore, the consequence of not adhering to the time frame is laid down in the Act. Whereas, no such default provision is stipulated in Section 41 of FERA. It merely says that they shall not be entitled to retain the documents seized beyond a period of six months. In Bhavnagar University vs. Palitant Sugar Mill (P) Ltd. [(2003) 2 S.C.C. 111], it was held as follows :-
"We are not oblivious of the law that when a public functionary is required to do a certain thing within a specified time, the same is ordinarily directory but it is equally well settled that when consequence for inaction on

the part of the statutory authorities within such specified time is expressly provided, it must be held to be imperative.

In Sutherland's Statutory Construction, 3rd Edn., Vol.3, at p.102, the law is stated as follows :
"... unless the nature of the act to be performed, or the phraseology of the statute is such that the designation of time must be considered a limitation of the power of the officer."
At p.107 it is pointed out that a statutory direction to private individuals should generally be considered as mandatory and that the rule is just the opposite to that which obtains with respect to public officers. Again, at p.109, it is pointed out that often the question as to whether a mandatory or directory construction should be given to a statutory provision may be determined by an expression in the statute itself of the result that shall follow non-compliance with the provision. At p.111 it is stated as follows :
"As a corollary of the rule outlined above, the fact that no consequences of non-compliance are stated in the statute, has been considered as a factor tending towards a directory construction. But this is only an element to be considered, and is by no means conclusive."

(See also Crawford on Statutory Construction, Article 269 at p.535)"

Of course, it may be submitted that, that case arose out of a land acquisition proceedings, whereas the Act in question is penal in nature. While one is conscious of this, the observations in the above case are only used as a guidance for determining whether a mandamus should be issued. The same position was reiterated in Nasiruddin vs. Sita Ram Agarwal [(2003) 2 S.C.C. 577], where it has been held as follows :-
"Yet there is another aspect of the matter which cannot be lost sight of. It is a well-settled principle that if an act is required to be performed by a private person within a specified time, the same would ordinarily be mandatory but when a public functionary is required to perform a public function within a time-frame, the same will be held to be directory unless the consequences therefor are specified."

21. On a consideration of these legal provisions as well as the approach taken by the Supreme Court as well as the Division Bench of this Court, even while disapproving the retention of the documents by the respondents beyond the time frame prescribed, one must conclude that the mandamus prayed for cannot be granted.

22. The question of affording a pre-decisional or post-decisional hearing after the order of extension was passed also does not arise in this case since as I have already held, the order dated 7.1.1997 is not an order of extension as per the Proviso to Section 41. The date from which the six months' period starts is only 2.1.1997 and therefore, the question whether the petitioner should be afforded a hearing as held by the Supreme Court in decisions which arose under the Customs Act need not be considered here, since there was no order of extension before the expiry of the six months' period, which would have fallen on 1.7.1997. Instead, 15 days thereafter, the

respondents issued the notice under Section 51. The commencement of proceedings under Section 51 is from the date when the notice is issued and

not from the date on which the notice was received. For this, the order in Writ Appeal No.791 of 1995 is the precedent. Therefore, even if the petitioner received the notice only on 23.7.1997, that is hardly relevant.

23. In 1977 (I) M.L.J. 497 cited supra, the Division Bench held that it was open to the adjudicating authority to summon the documents if required. If so, when the proceedings commenced, i.e. 16.7.1997, the authorities had the power to summon the documents. Therefore, as has been held in the same judgment, except to serve the technical purpose of demonstrating to the Enforcement authorities that their retention of the documents is limited by the language of Section 41, no purpose would be served by issuance of a mandamus. It is also not possible to accept the contention that when the 'documents' are currency, then the question of their being contravention of the law or evidence of contravention does not arise. When the Explanation to Section 33 clearly provides that for that Section and other Sections in the Explanation, documents would include currency, then the mention of documents, wherever it occurs, in Section 41 shall also include currency.

24. The petitioner does not challenge the right of the respondents to issue the original notice under Section 33(2) or the right of the respondents to retain the documents for the first period of six months. Therefore, if the currency would be documents for the first period of six months, thus amounting to contravention of the Act or evidence of contravention of the Act, then a different stand cannot be taken when the question of extension of the six months' period arises. The definition will apply here also. When the consequence of failure to initiate proceedings under Sections 51 or 56 has not been spelt out in the form of a direction to return the documents as provided for in Section 111 of the Customs Act, the contention of the petitioner that on the expiry of the six months they get a vested right to get back the documents cannot be accepted. There can be no doubt that the provision of such time frame is a valuable safeguard to citizens against the exercise of uncanalized power. But, the authorities have the power to call upon the petitioner to furnish the documents not only under Section 33 of the Act, but under the other provisions of the Act also. It is undeniable that the authorities will necessarily have to adhere to the time frame and be conscious that before the lapse of the six months, if they think it necessary to retain the documents, orders should be passed recording the reason therefor in writing. However, the failure to do so alone will not entitle the petitioner the right to have a mandamus issued in his favour.

25. Even in A.I.R. 1965 S.C. 1 cited supra, the Supreme Court considered whether the order of the High Court directing return of the two documents to the respondent was a correct order. The Supreme Court also observed that for the return of documents, no express provisions are necessary. It was held as follows :-
"Documents seized have to be returned if the law provides that they

are not to be retained after a certain period of time. Such a direction under the statute is sufficient justification and authority for the person in possession of the documents to return them to the person from whose possession they had been seized. Provisions are necessary for retaining documents of others and not for returning them to the persons entitled."

The Director of Enforcement kept applying to the Chief Presidency Magistrate for retaining the documents under the impression that the Magistrate could legally order the same. The Supreme Court then observed that one of the methods that the Director of Enforcement could have taken for retaining possession of the documents if the investigation is not complete was to apply to the Central Government to make an order under Sub-section (19) of Section 2 for a direction to the owner of those documents to furnish them to the Director of Enforcement. The ensuing portion of the order is relevant:-
"Such an order will be legal justification for the Director of Enforcements to retain in possession any of the documents which notionally he would be deemed to have returned to the owner on the expiry of the four months

and to have got fresh possession over those documents not by virtue of a search warrant but by virtue of an order of the Central Government under sub-section (2) of Section 19."

Therefore, even there, where the Supreme Court held that the Magistrate had no jurisdiction to permit retention, it was observed that an order under Section 19(2) would be legal justification for the Director to retain possession of the documents which notionally (emphasis supplied) he would be deemed to have returned. In conclusion, the Supreme Court allowed the appeal, but ordered that the documents can be retained by the Director of Enforcement till the final conclusion of the proceedings.

26. Therefore, not only in this case, but as we have seen in Arjunan Chettiar's case and in Barium Chemical's case, the trend of the decisions has been to permit retention, either to enable the Department to obtain an order or to conclude the adjudication proceedings which had commenced, even though the period had expired. This is because contravention of enactments such as the FERA injure the nation's economic health. The interest of safeguarding that, overweighs the individual's interest. There is no reason why a different approach should be taken in this case.

27. For all these reasons, the writ petition is dismissed and a direction is given to the respondents to conclude the adjudication proceedings commenced against the petitioner by their notice under Section 51, within a period of twelve weeks from the date of receipt of the order. No costs. Consequently, W.M.P. No.25973 of 1997 is closed.

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Index : Yes
Website : Yes

To

1. The Assistant Director,
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Sastry Bhavan,
Madras-6.

2. The Special Director,
Enforcement Directorate,
New Delhi.